NOTES

WASHINGTON NOTES

THE COAL RATE DECISIONS

The Supreme Court of the United States has handed down an opinion in the cases of *Northern Pacific Railway Company* v. *State of North Dakota*, and *Minneapolis, St. Paul & Sault Ste. Marie Railway Company* v. *State of North Dakota*. These cases are what has been known as the "North Dakota Coal Rate cases" (Nos. 420 and 421, October term, 1914). The cases are of special importance because of the strong position taken by the court in refusing to admit the validity of rates fixed by a state railway commission, on the ground that such rates are confiscatory.

By chap. 51 of the laws of 1907, the legislature of North Dakota fixed maximum intrastate rates, graduated according to distance, for the transportation of coal in carload lots. It was further provided that in case the transportation was over two or more lines of railroad it should be considered as one haul, the compensation for which should be divided among the carriers according to their agreement or, if they could not agree, as the railroad commissioners should decide, subject to appeal to the courts. While the statutory rates governed all coal shipments, their practical application was almost solely to lignite coal. The carriers refused to put the rates into effect, and in August, 1907, the attorney-general of the state began proceedings in its supreme court to obtain a mandatory injunction against the Northern Pacific Railway Company, the Minneapolis, St. Paul & Sault Ste. Marie Railway Company, and the Great Northern Railway Company. The companies answered that the statute violated the commerce clause of the federal Constitution, and also that it infringed the Fourteenth Amendment by fixing rates that were "unremunerative," "unreasonable," and "confiscatory." The supreme court of the state, overruling these contentions, granted the injunction. It was held that the evidence was not sufficient to overcome the presumption in favor of the rates. On writ of error from this court, the decree was affirmed without prejudice to the right of the railroad companies to reopen the case after an adequate trial of the rates. This decision was rendered in the early part of the year 1910,

and thereupon the rates were put into effect. After a trial for over a year, the case was reopened, voluminous testimony was taken, and the supreme court of the state, making its separate findings of fact as to the effect of the rates in the intrastate business of each carrier, and stating its conclusions of law, entered judgment commanding the carriers to keep the rates in force.

On the strength of the facts as thus stated, the United States Supreme Court now holds:

> It is presumed—but the presumption is a rebuttable one—that the rates which the state fixes for intrastate traffic are reasonable and just. When the question is as to the profitableness of the intrastate business as a whole under a general scheme of rates, the carrier must satisfactorily prove the fair value of the property employed in its intrastate business and show that it has been denied a fair return upon that value. With respect to particular rates, it is recognized that there is a wide field of legislative discretion, permitting variety and classification, and hence the mere details of what appears to be a reasonable scheme of rates, or a tariff or schedule affording substantial compensation, are not subject to judicial review. But this legislative power cannot be regarded as being without limit. The constitutional guaranty protects the carrier from arbitrary action and from the appropriation of its property to public purposes outside the undertaking assumed; and where it is established that a commodity, or a class of traffic, has been segregated and a rate imposed which would compel the carrier to transport it for less than the proper cost of transportation, or virtually at cost, and thus the carrier would be denied a reasonable reward for its service after taking into account the entire traffic to which the rate applies, it must be concluded that the state has exceeded its authority.

The interesting feature of the case from the technical standpoint is found in the fact that in this decision the court passes upon the method to be employed in determining whether a particular rate is or is not confiscatory. In these cases the rates charged applied only to coal, one among many commodities transported in the intrastate traffic of the state of North Dakota. It had been contended in the lower court that there was no confiscation, because of the fact that the railroad made from this traffic as a whole a sufficient amount of income. On this point the state court held:

a) The statutory freight rate is presumed to be reasonable, which presumption continues until the contrary appears and the rate is shown beyond a reasonable doubt to be confiscatory.

b) Proof that a rate is non-compensatory—that is, while producing more revenue than sufficient to pay the actual expenses occasioned by the trans-

portation of the commodity, but insufficient to also reimburse for that proportion of the railroad's fixed or overhead costs properly apportionable to such commodity carried—is not sufficient to establish that the rate is contrary in law.

c) In order to establish such a non-compensatory rate to be confiscatory, it must further appear that any deficit under the rate affects the net intrastate freight earnings materially, and reduces them to a point where they are insufficient to amount to a reasonable rate of profit on the amount of the value of the railroad property within the state contributing to produce such net earnings.

The Supreme Court of the United States takes a view precisely opposed to the state court on the points of accounting involved in this dictum. It states specifically that there is no basis for distinguishing between "out-of-pocket" costs and other outlays which are incurred for the support of traffic in general, such as maintenance of way and structures, general expenses, taxes, and the like. It is not a sufficient reason for excluding such freight expenses from the computation to say that they would still have been incurred had the particular commodity not been transported. The state cannot establish the cost of carrying coal by throwing the expense incident to the maintenance of the roadbed, and the general expenses, upon the carriage of wheat, or the cost of carrying wheat by throwing the burden of the upkeep of property on coal and other commodities. This, of course, does not mean that all commodities are to be treated as having been carried at the same rate of expense. The outlays that exclusively pertain to a given class of traffic must simply be assigned to that class, and the other expenses must be fairly apportioned. It may be difficult to make such an apportionment, but when conclusions are based upon costs, the entire cost must be taken into account.

In much the same strain the court holds that the argument that a low rate has been imposed from general considerations of public policy is not sound. While local interests properly serve as a motive for enforcing reasonable rates, it is a different matter to say that the state may compel a carrier to amend a rate upon a particular commodity that is less than reasonable or to carry gratuitously in order to build up a local enterprise. This, it is held, would be to go outside the carriers' undertaking and outside the field of reasonable supervision of the conduct of its business, and would be equivalent to an appropriation of property to public use upon terms to which the carrier had in no way agreed. There is, therefore, no basis for the claim that a given low rate is to be supported on the ground of public policy if, on the facts found to exist, it is deemed to be less than reasonable.

This decision is by far the most positive expression the court has recently made with reference to the limitation of the activity of state railroad commissions and is consequently regarded as an important element in the campaign the railways are now making against the application of abnormally low rates to them.

CLEARINGS AT THE FEDERAL RESERVE BANKS

After lengthy inquiries and after conversations with representatives of the several reserve banks, the Federal Reserve Board has directed the introduction of a voluntary reciprocal plan of immediate clearance at all those federal reserve banks where a clearing plan is not already in operation, the same to take effect with as little delay as possible. Letters have been sent to all federal reserve agents and the latter requested to take the matter up at once with their boards of directors. The two banks which are practically excepted are those of St. Louis and Kansas City, where general clearance is already in progress. The Federal Reserve Board has not prescribed details, inasmuch as it has found in those districts where general clearing is already being practiced that the best results were obtained by leaving the control of such details in the hands of the local authorities. It has, however, stated that it will approve as a beginning a reciprocal arrangement whereby banks assenting to the plan will be given the privileges of immediate clearance at par upon all other banks similarly assenting.

A general clearing arrangement, it is expected, will be developed in all districts at an early date under this plan, and this is likely to be gradually extended so as to embrace the bulk of the banks in the system. There is no provision for the settlement of the balances between federal reserve banks or for the inter-district clearing of checks. It is an intra-district clearing device pure and simple, the inter-district phases of the problem being reserved for future treatment. The plan suggested will be developed in detail in each of the federal reserve districts, but to carry out the scheme it will probably be necessary to require in each district that every such bank shall extend to each of its members the reciprocal privilege of having all checks or drafts upon other solvent member banks in its district credited immediately to its account at par upon the date of deposit, and that from and after an agreed date it shall charge to the proper account checks and drafts drawn upon assenting members. The voluntary character of the plan implies that every member bank may notify its federal reserve bank that it declines to avail itself of the proposed reciprocal clearing arrangement. In such case,

it is to be assumed that the federal reserve bank may determine to accept checks and drafts upon such non-assenting member banks for deferred debit and credit only, waiting until they arrive at the bank on which they are drawn before entering them as funds available for payment.

Every member bank availing itself of the clearing arrangement will naturally be obliged, in order to avoid depletion of reserve accounts, to maintain on deposit with the federal reserve bank a sum estimated as sufficient to protect any net debit balance created by checks and drafts drawn and charged against it. The plan will not apply to local clearings in clearing-house cities where machinery is already available for cashing the offsetting checks drawn on institutions in such places. It is expected that the Federal Reserve Board will refrain at present from applying any penalty for depletion of reserves, although it is permitted to do so by law, it being the view that this can be deferred until more experience has been acquired and until it has been ascertained how far member banks will voluntarily comply with the requirements of the new scheme. The whole question of clearance between member banks situated in different districts and the system of balances between federal reserve banks is thus postponed until a later date when the intra-district clearing system shall have been definitely established and in operation.

In working out the details of the new system of intra-district clearance some technical banking adjustments of large practical interest will necessarily have to be made. Two methods of bringing about the desired result have been suggested by a special committee of experts which was requested to investigate this matter, for the benefit of the Federal Reserve Board. In reporting on the subject these experts suggested the following plans:

1. All items deposited by member banks with federal reserve banks should become "reserve" only after they have been collected, that is, placed in the possession of the paying bank, and thus chargeable to the account of the drawer. They may be charged by member banks into the general ledger item "Due from Federal Reserve Bank of ———" the day they are mailed, but a memorandum account should be carried by the member bank in which this item is to be divided into "transit account" and "reserve account." Each member bank shall be furnished a time schedule and in connection therewith shall operate a book which may be designated the "Reserve Maturity Tickler." In accordance with the time schedule, the member banks will post the detail amounts according to the divisions mentioned under the dates when such checks may be credited to "transit account" and charged to "reserve account."

These dates in every case will be based on the receipt of the items at the place of payment.

2. As an alternative, differing in theory as applied to reserves but more practical and simple in operation, the federal reserve banks may charge member checks against the balance of such members upon the day forwarded, thus reducing the amount of bookkeeping necessary and simplifying the time schedule by more than one-half. On the other hand, member banks which object to having their reserves thus depleted without their knowledge may be permitted to use all checks on members of the same district as reserve the day they are forwarded to the federal reserve bank, as is now permitted in making remittances to reserve agents.

As it is desirable that drafts on federal reserve banks should be acceptable without question in all districts, it is suggested that such drafts be deposited in a separate total together with drafts payable by the reserve bank where deposited to be counted as reserve by the member bank at once, or if the alternative plan outlined in the preceding paragraph be adopted, drafts on all federal reserve banks would be included in the totals of checks on other members of the same district.

The federal reserve banks will thus credit the account of the member banks on day of receipt of the items, such account to be subject to draft. The reserve bank, in turn, may use a time schedule corresponding to the one used by member banks and similarly the reserve bank may charge transit account, crediting such account and charging other reserve banks as hereafter provided. If any member bank should draw below its collected funds, such draft should be subject to a charge based upon, but higher than, the current discount rate of interest.

Both these detailed methods of adjustments may be employed subject to modification according as varying conditions in the several districts require.

THE COLORADO COAL STRIKE REPORT

A final report has been rendered in the case of the Colorado coal strike investigation (House Document No. 1630, 63d Cong., 3d sess.) which was intrusted to a subcommittee of the House Committee on Mines some months ago, at a time when the Colorado coal strike was in a threatening condition. The report in question, with the testimony accompanying it which occupies several thousand pages, is probably the most complete and thorough account of the Colorado situation that exists, and the strike itself is shown to have been one of the most serious

labor difficulties that have developed in the United States within recent years, amounting almost to civil war.

The committee's report has little to recommend in the way of remedial measures either for the conditions developed in the course of this investigation or for other conditions of a similar kind that may come into existence in the future. In conclusion, the general observation is made that "by a gradual but sure development, the coal business of the country is being conducted on a large scale and by frequent consolidations is largely being carried on by large companies. Next to the business of transportation, the fuel business of the country touches the people and their business in an intimate and important way. If these strike troubles continue to break forth, it will plainly be necessary to consider seriously whether some measure of regulation shall not be adopted with reference to this business as carried on in interstate commerce, as is now done with reference to the business of transportation." This general suggestion of broad federal interference is practically the only plan contained in the entire course of the report, and even this is reported only by a majority of the committee, two dissenting reports being filed by other members. With reference to the actual facts in the Colorado situation the document is, however, more valuable, and furnishes material for the study of the industrial conditions prevailing in the coal industry in a way not hitherto feasible. In Colorado there are employed in normal times about 15,000 coal miners. There are several thousands of square miles of coal land in this state and very little shaft mining. The coal is easily mined, but it is so situated that the mines at the edge of the seams along the canyons have the advantage. This leads to the creation of industrial villages in and along the canyons. Most of the business appears to be in the hands of three principal concerns which claim to represent practically 95 per cent of the production of the state. The strike to which this investigation relates was called September 23, 1913, after strong effort on the part of the governor and others to prevent it. The miners left the employment of the companies, asserting that they should have had an increase of wages, better working conditions, pay for extra work in the mines, check weighmen, the right to trade where they pleased, and the recognition of the union. The operators asserted that the employees were already well paid, were subject to an eight-hour system, and could have check-weighmen appointed whenever they desired. Nevertheless, the controversy became much aggravated, the real issue ultimately at stake being the recognition of the labor organizations. It finally became necessary to send the militia into the coal

region to restore order, but the fact speedily developed that there was a considerable lawless or unruly element in the militia itself. The testimony shows that there was much unauthorized, and even outrageous or cruel, conduct toward the inhabitants on the part of those who were supposedly present to repress disorder. As the committee states it, "defenseless women and children did not escape the brutality of some members of this military organization. Many people were thrown into foul and miserable cells and kept there for days without any opportunity to prove their innocence, and were then released." With reference to general conditions of violence in the coal region, the committee states that "we believe that each side was ready to do battle with the other, even when the strike was first called, and had supplied themselves with the weapons and ammunition necessary for self-defense which they gave as their reason for securing guns and ammunition." Political conditions in the mining region were also found to be bad, while the manner of selecting juries in some parts of the district was contrary to law. The committee did not find positive evidence of any condition of peonage, but did find an extensive use of imported workers to take the place of mine workers, while it appeared that in the mining villages the companies, owing to their control of the land, the local stores, and practically every necessary of life or means of obtaining it, were in supreme command. On the strength of this condition of affairs the report offers much severe criticism upon various persons connected with the management of the companies, but appears only to suggest either a better disposition on their part or else stringent federal interference and control, with possible government ownership, as a means of escape from the bad situation. Arbitration is strongly suggested and even urged, but this is apparently only as a more or less academic matter, as the committee finally makes reference to the fact that the federal Commission on Industrial Relations is now considering the whole state of relationships between capital and labor and is looked to as the source of possible helpful suggestions. The incapacity of the federal government to deal with conditions within a state under existing constitutional law, except as a matter either of voluntary arbitration on the part of those concerned or of direct military control on the part of the government itself, for the purpose of repressing violence and protecting the interest of the public as a whole, is very clearly made evident by the showing of the report, and it is equally clear that there are states in which the existing local authorities are not competent to cope with strong combinations either of capital or of labor.

DRASTIC SEAMEN'S LEGISLATION

The Act to Promote the Welfare of American Seamen (Public Document No. 302, 63d Cong.), approved by President Wilson on March 4, is not only one of the most far-reaching provisions with reference to the conditions of labor at sea and the protection of life at sea, but is also an act which, by reason of its drastic restrictions upon foreign vessels entering American waters, is certain to give rise to complications of many kinds in our foreign relations. This probability of difficulty is due to the fact that the measure does not confine itself to vessels of the United States, but goes farther and undertakes to enforce the same regulations upon ships of foreign registry engaged in trade with this country.

The new measure endeavors first of all to limit the hours of work on shipboard by requiring the maintenance of a certain number of "watches," and the observance of a specified number of holidays while the ship is in safe harbor. The payment of wages is required to be made within two days after the termination of the agreement under which the seaman is shipped or at the time he is discharged, and in the case of vessels making foreign voyages, within four days after discharge of the employee, or within twenty-four hours after the discharge of the cargo. Where seamen are discharged (without sufficient cause) a sum equal to two days' pay is forfeited for each and every day during which payment is delayed beyond the period specified. A seaman is also entitled to receive on demand one-half of the wages earned up to the date at which the request is made if he makes the demand while the vessel is in port en route, except that no such demand shall be made oftener than once every five days. In cases where complaint is made by the majority of the crew of any vessel that such a ship is in an unsuitable condition or that her provisions or stores are not wholesome, a consul of the United States, before whom such complaint is made, may appoint a committee of three who shall examine into the cause of the complaint and rectify it. A space of not less than 120 cubic feet and not less than 16 square feet is to be apportioned to each seaman on a merchant vessel, and wherever voyages last more than three days between ports, a hospital compartment is to be provided. Other conveniences are also required, and various forms of punishment, more or less in use on shipboard heretofore, are prohibited. The payment of advance wages, which has often been availed of for the purpose of getting control of seamen, is prohibited, as well as agreements for the allotment of any portion of a man's wages to any member of his family. These

provisions regarding wages and others of a like description are made applicable to foreign vessels in the following language:

> That this section shall apply as well to foreign vessels while in waters of the United States as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation. The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel, seeking clearance from a port of the United States shall present his shipping articles at the office of clearance, and no clearance shall be granted to any such vessel unless the provisions of this section have been complied with.

The provisions of the act with reference to life-saving appliances are exceedingly inclusive, applying to many classes of vessels and calling for an elaborate schedule of boats, rafts, and other appliances, and fixing the proportion in which such appliances shall be carried, both with respect to one another, and with respect to the number of passengers on board. In order to avoid the difficulties predicted by some in connection with efforts to enforce these requirements upon foreign ships, it is required that all articles in treaties and conventions providing for the arrest and imprisonment of officers and seamen deserting from merchant vessels of foreign nations in the United States are to be withdrawn and canceled at the earliest moment, notice to be given within ninety days after the passage of the act to the various nations affected by the measure. A period of eight months within which to apply the law is allowed, its provisions to be mandatory at the end of that time, while as to foreign vessels they are to be mandatory at the end of twelve months from date of passage. So severe are the restrictions of this law considered to be, that some American shipowners have already given notice that they will transfer their vessels to foreign flags. Intimations that the subject will be seriously taken up diplomatically by foreign countries affected, as soon as any effort is made to enforce the provisions of the law upon vessels of such countries, have already, it is understood, been received in authoritative quarters.